

STATE OF MONTANA  
BEFORE THE BOARD OF LABOR APPEALS

IN THE MATTER OF THE UNIT CLARIFICATION NO. 6-89:

LINCOLN COUNTY SHERIFF'S DEPARTMENT)  
RAY H. NIXON, SHERIFF, )

Petitioner, )

vs. )

TEAMSTERS UNION LOCAL NO. 2, )

Respondent. )

FINDINGS OF FACT;  
CONCLUSIONS OF LAW;  
AND  
RECOMMENDED ORDER

\* \* \* \* \*

On August 22, 1989, the Petitioner, in the above-captioned matter, filed a petition with this Board for Unit Clarification of Bargaining Unit. The Petitioner contends that the positions of Chief Detention Officer and Chief Dispatcher should be excluded from the existing bargaining unit.

Petitions for Unit Clarification proceedings are provided for in Section 39-31-207 MCA and ARM 24.26.630.

On September 25, 1989, the Respondent filed a response with this Board disagreeing with the Petitioner as to the composition of the bargaining unit.

A formal hearing was conducted in the above-captioned matter on November 8, 1989, in Kalispell, Montana. The formal hearing was conducted under authority of Section 39-31-207 MCA, pursuant to ARM 24.26.630(5) and in accordance with the Administrative Procedure Act (Title 2, Chapter 3, MCA). The incumbents of the positions in question, Don Gring, Chief Detention Officer, and Sharon Denton, Chief Dispatcher, represented the Petitioner. Ray H. Nixon, Sheriff, appeared as a witness. Jack C. Cutler, Business Representative Teamsters Union Local No. 2, represented the Respondent.

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**ISSUE**

Whether the positions of Chief Detention Officer and Chief Dispatcher fall within the definition of management official and should be excluded from the existing bargaining unit.

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**FINDINGS OF FACT**

1. The collective bargaining unit to which the positions of Chief Detention Officer (formerly Chief Jailor) and Chief Dispatcher presently belong was certified by the Board of Personnel Appeals on February 9, 1979 (Stipulated Fact).

2. The collective bargaining unit has been and is presently defined as "all employees in the Sheriff's Department as permitted by the State of Montana Public Employees Collective Bargaining Act (Stipulated Fact).

3. On January 20, 1988, Don Gring was promoted from the position of Chief Jailor to a newly created position of Chief Detention Officer. With the change of positions, Mr. Gring assumed additional duties and responsibilities. As Chief Detention Officer, Mr. Gring continued to perform those duties previously performed as Chief Jailor and assumed new duties caused by the implementation of an integrated computer system and assumed duties previously performed by the Under-sheriff.

4. Duties presently performed by Mr. Gring that were previously performed by Mr. Gring as Chief Jailor would be considered bargaining unit work. Duties more recently assigned to Mr. Gring since his promotion to the position of Chief Detention Officer and relate to the implementation and operation of the computer system and maintenance of various checking accounts could be performed by a clerical position and be considered bargaining unit work. However, because of

1 budgetary shortcomings, the computer duties, checking account  
2 tasks, and other work recently assigned but clerical in  
3 nature are being performed by Mr. Gring in his capacity as  
4 Chief Detention Officer. Additionally, and again because of  
5 budgetary constraints, Mr. Gring works a daily shift as a  
6 regular jailor.

7 5. Other duties assumed by Mr. Gring when promoted to  
8 Chief Detention Officer relate to responsibilities previously  
9 performed by the Undersheriff. The Undersheriff was  
10 responsible for the operation of the Detention Center prior  
11 to the creation of the Chief Detention Officer position. Mr.  
12 Gring assumed the Detention Center responsibilities. In his  
13 course of work, Mr. Gring has discretionary latitude under  
14 established employer policy to make independent decisions  
15 that may affect the operations of the Detention Center.

16 6. Sharon Denton was promoted from Dispatcher to Chief  
17 Dispatcher on July 1, 1988.

18 7. The position of Chief Dispatcher has been in  
19 existence for some time, however, the duties of the position  
20 have been modified to some degree. Newer duties of the  
21 position include the entry and retrieval of information to  
22 the Criminal Justice System (CJIN) and the National Crime  
23 Information Center (NCIC); coordination of the emergency  
24 "911" system; and the training of other dispatch personnel by  
25 use of CJIN and NCIC provided workbooks.

26 8. Directives that affect the operation of the Dis-  
27 patch Center originate with the Sheriff or Undersheriff and  
28 are passed to the Chief Dispatcher for distribution to all  
29 Dispatch personnel.

30 9. The position of Chief Patcherer did not assume any  
31 duty or responsibility of a non-bargaining unit position  
32 (managerial, supervisor, or executive) of the employer.

1           10. As similar to the position of Chief Detention  
2 Officer, the position of Chief Dispatcher works a regular  
3 daily shift performing duties of a regular Dispatcher  
4 because of budgetary constraints.

#### 5                           DISCUSSION

6           The Montana Supreme Court has approved the practice of  
7 the Board of Personnel Appeals in using federal court and  
8 NLRB precedents as guidelines in interpreting the Public  
9 Employees Collective Bargaining Act (the Act) as the state  
10 act is so similar to the federal Labor Management Relations  
11 Act (LMRA). State Department of Highways v. Public Employees  
12 Craft Council, 165 Mont. 249, 529 P.2d 785 (1974), 87 LRRM  
13 2101; AFSCME Local 2390 v. City of Billings, 171 Mont. 20,  
14 555 P.2d 507, 93 LRRM 2753 (1976); State ex rel. Board of  
15 Personnel Appeals v. District Court, 183 Mont. 223, 598 P. 2d  
16 1117, 103 LRRM 2297 (1979); Teamsters Local 45 v. State ex  
17 rel. Board of Personnel Appeals, 195 Mont. 272, 635 P.2d  
18 1310, 110 LRRM 2012 (1981), City of Great Falls v. Young  
19 (Young III), 211 Mont. 13, 686 P.2d 185, 119 LRRM 2682  
20 (1984).

21           Managerial employees are defined as those employees who,  
22 "formulate and effectuate management policies by expressing  
23 and making operative the decisions of their employer."  
24 Palace Laundry Dry Cleaning Corp., 75 NLRB 320, 21 LRRM 1039  
25 (1947); NLRB v. Bell Aerospace Co., 416 U.S. 267, 85 LRRM  
26 2945 (1974). See also Yeshiva University, 444 U.S. 672, 103  
27 LRRM 2526 (1980). The court in Yeshiva, supra, said that  
28 "managerial employee must exercise discretion within or even  
29 independently of established employer policy and must be  
30 aligned with management"

31           In this instant matter, it is clear the created position  
32 of Chief Detention Officer assumed duties of an executive

1 position (Undersheriff) of the employer relating to the  
2 operation of the Detention Center. Mr. Gring, the Chief  
3 Detention Officer, manages the Detention Center in  
4 conformance with employer policy and can exercise discretion  
5 independently of the established policies. The Chief  
6 Detention Officer position is aligned with management  
7 because of the responsibility of "managing" the Detention  
8 Center.

9 The position of Chief Dispatcher is not new to the  
10 structure of the employer. The position has changed in  
11 recent time relating to specific duties. However, the more  
12 recent duties relate to the dissemination of information  
13 concerning criminal activities and the training of personnel.  
14 Both such duties were primarily caused by the automation of  
15 information networks. The position of Chief Dispatcher has  
16 not assumed any duties of a management position (non-  
17 bargaining unit position). The position of Chief Dispatcher  
18 more closely resembles a "lead-worker or "foreman" position  
19 as compared to a "managerial employee" as defined above.

#### 20 CONCLUSIONS OF LAW

21 The position of Chief Detention Officer employed by the  
22 Lincoln County Sheriff's Department is a management official  
23 pursuant to Section 39-31-103(4) MCA and therefore is not  
24 protected by the Collective Bargaining Act for Public  
25 Employees (Title 39, Chapter 31, MCA). The position of Chief  
26 Dispatcher is not a management official pursuant to Section  
27 39-31-103(4) MCA and therefore is protected by the Act.

#### 28 RECOMMENDED ORDER

29 The position of Chief Detention Officer is excluded from  
30 the bargaining unit defined as "all employees in the  
31 Sheriff's Department as permitted by the State of Montana  
32 Public Employee's Collective Bargaining Act.

1 DATED this 15<sup>th</sup> day of January, 1990.

2 BOARD OF PERSONNEL APPEALS

3  
4 By: Stan Gerke  
5 Stan Gerke  
6 Hearing Examiner

7 SPECIAL NOTICE

8 In accordance with Board's Rule ARM 24.25.107(2), the  
9 above RECOMMENDED ORDER shall become the FINAL ORDER of this  
10 Board unless written exceptions are filed within 20 days  
11 after service of these FINDINGS OF FACT, CONCLUSIONS OF LAW,  
12 AND RECOMMENDED ORDER upon the parties.

13 CERTIFICATE OF MAILING

14 I, Lami Votendahl, do hereby certify  
15 that a true and correct copy of this document was mailed to  
the following on the 15<sup>th</sup> day of January, 1990.

16 Jack C. Cutler  
17 Business Representative  
18 Teamsters Union Local No. 2  
P. O. Box 8144  
Missoula, MT 59807

19 Ray H. Nixon, Sheriff  
20 Lincoln County Sheriff's Department  
512 California Avenue  
21 Libby, MT 59923

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